



5001-06-P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 252

[Docket DARS-2019-0055]

RIN 0750-AK53

Defense Federal Acquisition Regulation Supplement: Modification of DFARS Clause "Trade Agreements" (DFARS Case 2019-D016)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to update a paragraph citation in DFARS clause 252.225-7021, Trade Agreements.

DATES: Effective [Insert date of publication in the FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Ms. Carrie Moore, telephone 571-372-6093.

SUPPLEMENTARY INFORMATION:

I. Background

This final rule amends DFARS clause 252.225-7021, Trade Agreements, to update an outdated citation in paragraph (e) of the basic clause and paragraph (f) of the alternate II clause.

The DFARS clause is included in solicitations and contracts for the acquisition of supplies subject to the World Trade Organization Government Procurement Agreement. The clause: provides pertinent definitions and country listings for designated and qualifying countries; requires contractors to deliver only U.S.-made, qualifying country, or designated country end items, unless otherwise stated in the contract; prohibits the contract price from including duty for products for which the contractor will claim duty-free entry; and provides information on applicable sections of the Harmonized Tariff Schedule of the United States (HTSUS).

Paragraph (e) of the basic clause and paragraph (f) of the alternate II clause provide a link to the HTSUS and identify specific sections of the Schedule that provide more information on the duty-free status of articles specified in paragraph (a)(2)(ii)(A) of the clause. Paragraph (a)(2)(ii)(A) used to be the location in the clause for the definition of "Caribbean Basin country end product," but this paragraph number no longer exists. Instead, the clause has been renumbered and all of the definitions in the clause are include in alphabetical order under paragraph (a).

This rule removes the reference to paragraph (a)(2)(ii)(A) in the clause and replaces it with a reference to the definition of "Caribbean Basin country end product" in paragraph (a).

II. Discussion and Analysis

The modification of this DFARS text implements a recommendation from the DoD Regulatory Reform Task Force. On February 24, 2017, the President signed Executive Order (E.O.) 13777, "Enforcing the Regulatory Reform Agenda," which established a Federal policy "to alleviate unnecessary regulatory burdens" on the American people. In accordance with E.O. 13777, DoD established a Regulatory Reform Task Force to review and validate DoD regulations, including the DFARS. A public notice of the establishment of the DFARS Subgroup to the DoD Regulatory Reform Task Force, for the purpose of reviewing DFARS provisions and clauses, was published in the *Federal Register* at 82 FR 35741 on August 1, 2017, and requested public input. No public comments were received on this clause. The DoD Regulatory Reform Task Force reviewed the requirements of DFARS clause 252.225-7021 and recommended its modification to correct the reference.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule only updates a citation in an existing clause. The rule does not impose any new requirements on contracts at or below the simplified acquisition threshold or for commercial items, including commercially available off-the-shelf items.

IV. Publication of This Final Rule for Public Comment Is Not Required by Statute

The statute that applies to the publication of the Federal Acquisition Regulation is Office of Federal Procurement Policy statute (codified at title 41 of the United States Code). Specifically, 41 U.S.C. 1707(a)(1) requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because DoD is not issuing a new regulation; rather, this rule is merely updating a reference in an existing clause.

V. Executive Orders 12866 and 13563

E.O.s 12866 and E.O. 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of

harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

VI. Executive Order 13771

This rule is not subject to E.O. 13771, because this rule is not a significant regulatory action under E.O. 12866.

VII. Regulatory Flexibility Act

Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 41 U.S.C. 1707(a)(1) (see section IV. of this preamble), the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) are not applicable. Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

VIII. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Part 252

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR part 252 is amended as follows:

PART 252-SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for 48 CFR part 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

252.225-7021 [Amended]

2. Amend section 252.225-7021 by-

a. In the clause heading, removing the date "(AUG 2019)" and adding "(SEP 2019)" in its place;

b. In paragraph (e) introductory text, removing "paragraph (a)(2)(ii)(A)" and adding "the definition of "Caribbean Basin country end product" within paragraph (a)" in its place.

c. In the Alternate II clause-

i. In the clause heading, removing the date "(AUG 2019)" and adding "(SEP 2019)" in its place;

ii. In paragraph (f) introductory text, removing "paragraph (a)(2)(ii)(A)" and adding "the definition of "Caribbean Basin country end product" within paragraph (a)" in its place.

[FR Doc. 2019-19560 Filed: 9/12/2019 8:45 am; Publication Date: 9/13/2019]